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SERVICE DATE – JULY 5, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 579X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—
IN PARKE AND VERMILLION COUNTIES, IN

Decided: July 1, 2005

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon an approximately 1.17-mile line of its railroad between milepost BD-191.41 at Montezuma and milepost BD-192.58 at Hillsdale in Parke and Vermillion Counties, IN. Notice of the exemption was served and published in the Federal Register on May 26, 2000 (65 FR 34249-50). The exemption was scheduled to become effective on June 25, 2000, but a formal expression of intent to file an offer of financial assistance (OFA) was timely filed by the Parke County Redevelopment Commission (PCRC) to purchase the entire line.¹ On June 23, 2000, PCRC timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27(c) to acquire the line pursuant to a donation by CSXT.

By decision served June 28, 2000, PCRC was found to be financially responsible, and the effective date of the decision authorizing abandonment was postponed to permit the OFA process to proceed. In a decision served July 14, 2000, PCRC was authorized under 49 U.S.C. 10904 to acquire the line by donation and the exemption was dismissed, effective on the date the sale was consummated.² By letter filed on October 18, 2002, however, the Board was notified that the parties did not intend to proceed under the OFA process.

¹ This automatically stayed the effective date of the exemption for 10 days until July 5, 2000. See 49 CFR 1152.27(c)(2)(i).

² On May 22, 2000, the Indiana Department of Transportation (InDOT) filed a request for a 180-day public use condition under 49 U.S.C. 10905. Also, by petition filed on June 7, 2000, the Indiana Trails Fund, Inc. (ITF) filed a request for the issuance of a notice of interim trail use (NITU) for the entire line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and for a 180-day public use condition under 49 U.S.C. 10905 to negotiate with CSXT for acquisition of the right-of-way for use as a recreational trail. Both requests were held in abeyance pending completion of the OFA process.

On December 30, 2002, a NITU was issued in this proceeding: (1) authorizing ITF to negotiate an interim trail use/rail banking agreement with CSXT until June 28, 2003, for the 1.17-mile line of railroad, (2) authorizing a public use condition for ITF, InDOT, or any other interested person to negotiate with CSXT for acquisition of the right-of-way,³ and (3) extending the deadline for CSXT to consummate the abandonment and to file its notice of consummation until August 27, 2003. At the request of CSXT, the negotiation period under the NITU was extended numerous times—the latest by decision served December 23, 2004, extended the negotiation period to June 20, 2005. The December 23 decision also extended the deadline for CSXT to file its notice of consummation until August 19, 2005.

On June 28, 2005, CSXT filed a request to further extend the NITU negotiation period until December 17, 2005, and to extend the consummation deadline until February 15, 2006. CSXT states that it has not consummated the abandonment, has been unable to finalize negotiations with ITF, and desires to continue to negotiate for interim trail use/rail banking with ITF.

Even if a negotiation period expires, when a carrier consents to continuing negotiations and has not consummated abandonment of the line, the Board continues to have jurisdiction to grant an extension. Under the circumstances, an extension of the negotiation period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). Accordingly, the NITU negotiation period will be extended to December 17, 2005, and the consummation notice filing deadline will be extended to February 15, 2006.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. CSXT's request for an extension of the NITU negotiation period and its request for an extension of time to exercise abandonment authority are granted.
2. The negotiation period under the NITU is extended until December 17, 2005.
3. The authority to abandon must be exercised on or before February 15, 2006.

³ The public use condition expired on April 16, 2003.

4. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary